Office - Supreme Court, U. S.
FILED
JAN 19 1946
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 759

THE FIRST NATIONAL BANK OF LONGVIEW, TEXAS,

Petitioner,

vs.

CITY OF LONGVIEW, TEXAS,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT, AND BRIEF THEREON.

J. N. Saye,
Longview, Texas,
Counsel for Petitioner.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Statement of the matters involved	1
Reasons for granting the writ	3
Prayer for writ	3
Brief in support of petition	5
Opinion below	5
Jurisdiction	5
Statement of the case	6
Specification of error	6
Summary of argument	6
Point A	6
B	12
Conclusion	13
Appendix A	14
B	16
C	17

Table of Cases Cited

Adams v. *Nashville*, 95 U. S. 19	9
Evansville National Bank v. *Britton*, 105 U. S. 322	9
First National Bank v. *Anderson*, 269 U. S. 341	11
First National Bank v. *County of Chehalis*, 166 U. S. 440	10
First National Bank v. *Richmond*, 39 Fed. 309	11
Hammerstrom v. *Toy National Bank*, 81 F. (2d) 628	5
Mercantile National Bank v. *City of New York*, 121 U. S. 138	9
Merchants National Bank v. *City of Richmond*, 256 U. S. 635	10
National Bank of Commerce v. *Seattle*, 166 U. S. 463	10
National Bank of Redemption v. *City of Boston*, 125 U. S. 60	10
Owensboro National Bank v. *City of Owensboro*, 173 U. S. 664	11, 13

Table of Statutes and Rules Cited

	Page
Section 5219, Revised Statutes of the U. S. (12 U. S. C. A. 548)	1, 2, 3, 5, 6, 7
Section 24 of the Judicial Code (28 U. S. C. A. 41(1))	5
Supreme Court Rule 38, 5(b)	6
Articles 1165 to 1182, Vernon's R. C. S. of Texas	2
Article 1175, Vernon's R. C. S. of Texas	9

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 759

THE FIRST NATIONAL BANK OF LONGVIEW, TEXAS,

Petitioner,

vs.

CITY OF LONGVIEW, TEXAS,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of The First National Bank of Longview, Texas, respectfully shows to this Honorable Court:

A

Statement of Matters Involved

The question at issue in this case is whether the City of Longview, Texas, is authorized by Section 5219, Revised Statutes of the United States, 12 U. S. C. A., section 548 (Appendix A), *to assess ad valorem taxes against the shares of petitioner and collect such taxes from the owners of said shares in addition to a like tax levied against said shares and collected by the State of Texas.*

The District Court answered in the negative. The Fifth Circuit Court of Appeals reversed the District Court's judgment and answered in the affirmative.

Petitioner is a national banking association, duly organized and existing under the laws of the United States. Respondent is a "home rule" municipal corporation, which was created and which exists under Articles 1165 to 1182, Vernon's Revised Civil Statutes of the State of Texas, 1925, as amended.

The City of Longview, Texas, assessed and collected ad valorem taxes for the years 1943 and 1944, aggregating $7,727.50, against the shares of stock of The First National Bank of Longview, Texas. The bank, acting as agent of its shareholders, paid said taxes, under protest, to avoid penalties, and brought this suit for its shareholders to recover the amount of taxes so paid (R. 1-7).

Said taxes were in addition to taxes assessed against said shares and collected by the State of Texas for the same years (R. 6).

Against the bank's complaint, which challenged the city's authority to assess and collect said taxes under Section 5219, Revised Statutes of the United States, 12 U. S. C. A., section 548, the city filed a motion to dismiss on the ground that the complaint did not state a claim against it upon which relief could be granted (R. 8). The District Court overruled the motion and entered judgment for the bank against the city for the full amount of the taxes, interest and costs (R. 8-9). The Fifth Circuit Court of Appeals reversed and remanded the cause with direction to dismiss the complaint (R. 18).

Reasons Relied On for Allowance of the Writ

I

In deciding that Congress has, by Section 5219 of the Revised Statutes of the United States, 12 U. S. C. A., sec. 548, authorized the City of Longview, Texas, to assess and collect ad valorem taxes against the shares of stock of petitioner, a national banking association, in addition to like taxes assessed and collected against said shares for the same years by the State of Texas, the Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

II

The aforesaid decision of the Circuit Court of Appeals decides a federal question in a way probably in conflict with applicable decisions of this Court.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals, Fifth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 11,414, City of Longview, Texas, Appellant v. the First National Bank of Longview, Texas, Appellee, and that the judgment of the Circuit Court of Appeals may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

J. N. Saye,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 759

THE FIRST NATIONAL BANK OF LONGVIEW, TEXAS,

Petitioner,

vs.

CITY OF LONGVIEW, TEXAS,

Respondent

BRIEF

I

The Opinion of the Court Below

The opinion of the Circuit Court of Appeals has not been published, but it appears at pages 15-17 of the record herein.

II

Jurisdiction

The date of the judgment to be reviewed is December 3, 1945 (R. 18).

The Federal District Court acquired jurisdiction of this cause under Section 24 of the Judicial Code, Title 28 U. S. C. A., 41 (1). The statute under which this cause of action arises is Section 5219 of the Revised Statutes of the United States, Title 12 U. S. C. A., 548. (*Hammerstrom* v. *Toy Nat. Bank*, 81 F. 2d 628.)

This Court has jurisdiction of this application under Supreme Court Rule 38, paragraph 5 (b).

III

Statement of the Case

A full statement is set forth in the petition under the heading, "Statement of Matters Involved," and in the interest of brevity is not repeated.

IV

Specification of Error

The Circuit Court of Appeals erred in finding and holding that Section 5219, Revised Statutes of the United States, 12 U. S. C. A., 548, authorizes and empowers the respondent to assess and collect the taxes in question.

V

Summary of Argument

Point A. The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

Point B. The Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this Court.

POINT A

The Question of Federal Law

The Circuit Court of Appeals said that "The only question presented and upon which decision must turn is: 'Does Section 5219 of the Revised Statutes of the United States, Section 548, Title 12, U. S. C. A., permit, under state legis-

lative grant, a municipal corporation to tax the shares of stock of national banks?'" (R. 16).

The court answered the question in the affirmative, but the posed question is too broad.

The question is:

Does Section 5219 of the Revised Statutes of the United States, Section 548, Title 12, U. S. C. A. permit, under state legislative grant, a Texas "Home Rule" municipal corporation to tax the shares of stock in national banks, when the State of Texas, herself, taxes the same shares for her own use and benefit.

Section 5219, *supra*, provides:

"The legislature of each State (see Appendix 'A') may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause."

Subdivision (b) of this clause prohibits discrimination in taxing shares of national banks against them and in favor of other moneyed capital.

Subdivision (c) prohibits discrimination against national banking associations where a state adopts either the third or fourth form of taxation.

Subdivision (d) prohibits dividends derived from said shares from being taxed at a greater rate than is assessed upon the net income from other moneyed capital.

Subparagraph 2 of said section provides the method for taxing shares of nonresident shareholders.

Subparagraph 3 reads as follows:

"3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed."

Subparagraph 4 has to do with taxes assessed against national bank shares prior to March 25, 1926.

The analysis of the statute tells us that the only authority which Congress has given to the states, their municipalities, and their political subdivisions to tax the shares of national banking associations is found in the first paragraph of section 5219, and this paragraph grants the authority to the several "States," and it appears crystal clear that only *one* tax may be assessed, whether it be against the shares or includes dividends derived therefrom in the taxable income of the owner or holder thereof, or whether the association is taxed on its net income or according to or measured by its net income.

Art. 7165, Vernon's R. C. S. of Texas, 1925, as amended, (Appendix C), enacted in 1895, provides that, for the purpose of state taxation, shares of national banking associations shall be rendered to and assessed by the assessor of the county in which the bank is located.

The taxes here complained of were assessed against the shares of petitioner by respondent and they are in addition to those assessed by the State for the same periods of time under Art. 7165.

The Legal Status of Respondent

The City of Longview, Texas, is a Texas "Home Rule" Municipal Corporation. Its principal powers are enumerated in Art. 1175, Vernon's R. C. S. of Texas, 1925, as amended. It has full power of local self-government; the power to acquire, own and dispose of property; "To provide for the levying of any general or special ad valorem tax for any purpose not inconsistent with the Constitution of this State;" and to "provide for the collection of all taxes, including the right to impose penalties for delinquent taxes." In levying and collecting taxes the respondent does not act as an agent of the state, but for itself alone. It makes no accounting to the state for any of the taxes which it collects. It is, therefore, difficult to understand how the Circuit Court of Appeals could hold that the respondent's acts in levying and collecting the taxes in question were the acts of the State of Texas and authorized by Section 5219.

That Court said "While this question has not been directly decided by the Supreme Court of the United States, cases involving taxes levied by a municipality under this section have been before that Court many times and the right to levy and collect such taxes has been apparently conceded" (R. 17). The Court then cites six cases to support its statement. We should like to spend a few minutes with them to show that they are of no help in arriving at a correct decision of the question presented in the case at bar.

The lower Court seems to be in error as to the question involved in *Evansville National Bank* v. *Britton*, 105 U. S. 322. Britton was the Treasurer of Vanderburgh County, Indiana, and the suit challenged the validity of an Indiana statute. It was decided on April 3, 1882.

Adams v. *Nashville*, 95 U. S. 19, decided Nov. 5, 1877; *Mercantile National Bank* v. *City of New York*, 121 U. S.

138, decided April 4, 1887; *National Bank of Redemption* v. *City of Boston*, 125 U. S. 60, decided March 19, 1888; and *Merchants National Bank* v. *City of Richmond*, 256 U. S. 635, decided June 6, 1921, each challenged the validity of certain taxes levied against their shares, claiming that they violated the original Act of June 3, 1864 as amended by an Act of February 10, 1868, which provided "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State." *National Bank of Commerce* v. *Seattle*, 166 U. S. 463, decided April 12, 1897, is a case of the same kind. The opinion really tells us nothing, except that the complaint in the case is substantially the same, so far as any federal question is concerned, as the complaint in *First Nat. Bank* v. *County of Chehalis*, 166 U. S. 440, decided April 12, 1897, and that case is another case which charges illegal discrimination against the bank's shareholders.

As stated above, the question at issue in the case at bar was not at issue and was not discussed in either case cited by the Circuit Court of Appeals, but Section 5219, as it stood when those cases were decided, read "nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by *authority* of the State within which the association is located (Appendix B). Section 5219 does not now read "imposed by authority of the State." It now reads "The several States may tax said shares." (Our italics.)

The rule laid down by this Court is that national banks are not merely private moneyed institutions, but that they are agencies of the United States, created under its laws to promote its fiscal policies, and, therefore, the *banks*, their *properties*, and their *shares* cannot be taxed under *state* authority, except as Congress permits, and then only

in conformity with the restrictions. *First National Bank of Guthrie Center* v. *Anderson*, 269 U. S. 341; *Owensboro Nat. Bank* v. *City of Owensboro*, 173 U. S. 664.

Failure of Congress to authorize such taxation amounts to prohibition. *First National Bank* v. *Richmond*, 39 Fed. 309.

The only place in Section 5219 where any subdivision of a state is mentioned is in paragraph 3 where it is stated that "Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed." This suggests that Congress did not intend that the subdivisions of a State should tax any property of national banks other than their real property. (*First National Bank* v. *Anderson*, 269 U. S. 341, 347.) Indeed it would be impossible for the municipal corporations and the political subdivisions of a state to levy any tax against the shares of a national banking association, if the state elected to adopt either methods 2, 3 or 4 of taxation provided by the statute.

So far as this petition is concerned, it may be conceded that the Circuit Court of Appeals is correct in its statement that "A municipal corporation, so far as it is invested with subordinate legislative powers for local purposes, is a mere instrumentality of the State for the convenient administration of government." But Section 5219 does not authorize the several States and the instrumentalities of the several States "for the convenient administration of government," to tax the shares of national banking associations. The authorization goes to the several States only.

Thus, it is shown that the Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, and it also

appears that the decision of the Circuit Court of Appeals is erroneous.

POINT B

Probable Conflict with Decisions of This Court

This Court, speaking through Mr. Justice Van Devanter, in *First National Bank* v. *Anderson, supra*, at page 347, said: "National banks are not merely private moneyed institutions, but agencies of the United States created under its laws to promote its fiscal policies; and hence the banks, their property, and their shares cannot be taxed under state authority, except as Congress consents, and then only in conformity with the restrictions attached to its consent. *Des Moines National Bank* v. *Fairweather*, 263 U. S. 103, 106, 44 S. Ct. 23, 68 L. Ed. 191, and cases cited. The early legislation respecting these banks contained a restricted consent, which afterwards became section 5219 of the Revised Statutes. By it Congress assented to the taxation of the shares to their owners under the laws of the state where the bank was located, subject to the restriction that 'the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state,' *and further assented to the taxation of the real property of the bank for state, county, and municipal purposes 'to the same extent, according to its value, as other real property is taxed.'*" (Our italics.)

The words in the opinion which we have italicized seem to us to indicate that it is the opinion of this Court that Section 5219 limits the municipal corporations of the states in their taxation of national banks, their shares and their properties, to the banks' real property.

The decision of the Circuit Court of Appeals in the case at bar of necessity holds that the express grant of power to the States to tax shares of national banking associations

carries with it an implied power to the states to authorize their municipal corporations to also tax said shares. This holding is at least contrary to the principles announced by this Court. See also *Owensboro Nat. Bank* v. *City of Owensboro*, 173 U. S. 664.

Conclusion

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the rights of the petitioner, guaranteed to it by the federal statutes, may be protected, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals and finally reverse it and affirm the judgment of the District Court.

Respectfully submitted,

J. N. Saye,
Counsel for Petitioner.